

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg Division**

ELECTRONICALLY FILED 10/25/2019 U.S. DISTRICT COURT Northern District of WV

T.S.,

Plaintiff,

v.

Civil Action No.: 1:19-cv-199 (Kleeh)

**FAIRMONT STATE UNIVERSITY
BOARD OF GOVERNORS,
SHAWN EVANS,
PHI SIGMA PHI-EPSILON ZETA CHAPTER, INC. and
PHI SIGMA PHI NATIONAL FRATERNITY, INC.,**

Defendants.

COMPLAINT

Plaintiff, T.S., by undersigned counsel, hereby files her Complaint and states as follows:

I. STATEMENT OF JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 20 U.S.C. § 1681 (“Title IX”).

2. This Court has pendent jurisdiction over all State law claims herein asserted, pursuant to *United Mine Workers v. Gibbs*, 388 U.S. 715, 86 S. Ct. 1130, 16 L.Ed.2d 218 (1966).

3. Venue in this Court is proper under 28 U.S.C. § 1391(b), because the action is based in part upon a federal question and the events giving rise to this claim took place in this judicial district.

II. PARTIES

4. Plaintiff T.S. is now and was at all times relevant hereto a citizen and resident of the State of West Virginia.

5. Plaintiff was, at all times relevant hereto, a student enrolled at Fairmont State University (“FSU”). This action is brought anonymously for the following reasons: Plaintiff seeks to reserve her privacy in this sensitive and highly personal matter; she wishes to avoid further embarrassment and psychological damage, as this case concerns a sexual assault, which is a matter of extreme privacy.

6. Fairmont State University is a public institution of higher education created and continued by the State of West Virginia, with its primary campus located in Fairmont, Marion County, West Virginia.

7. The business and educational affairs of FSU are under the control, supervision, and management of its governing body, Defendant, Fairmont State University Board of Governors, located in Fairmont, West Virginia.

8. Defendant FSU has established a position of Title IX Coordinator, who is charged with the responsibility of overseeing the dissemination of information regarding Title IX to students, staff and faculty; coordinating training for employees; maintaining Title IX grievance/complaint files; monitoring Title IX deputies in the investigation and disposition of complaints; and answering inquiries from university and community members.

9. Defendant FSU’s Deputy Title IX Coordinators investigate complaints of sexual violence committed by FSU students against FSU students.

10. Defendant FSU also has an Office of Student Conduct, which holds hearings for students who allegedly have violated the FSU Student Conduct Code, including violations related to crimes and sexual violence.

11. Defendant Shawn Evans is resident of Marion County, West Virginia.

12. Defendant Phi Sigma Phi-Epsilon Zeta chapter (hereinafter “PSP-EZ”) is a chapter of the Phi Sigma Phi national fraternity. PSP-EZ is a domestic non-profit West Virginia corporation, with its principal business address located at 9 Timothy Lane, Fairmont, West Virginia.

13. Defendant Phi Sigma Phi National Fraternity, Incorporated (hereinafter “PSP”) is a non-profit corporation with its principal office address located at 9 Timothy Lane, Fairmont, West Virginia.

III. TITLE IX

14. The United States Department of Education’s (“DOE”) Office for Civil Rights (“OCR”) enforces, among other statutes, Title IX of the Education Amendments of 1972, found at 20 U.S.C. § 1681 *et seq.* and its implementing regulations, 34 C.F.R. Part 106.

15. The DOE was authorized by Congress, pursuant to 20 U.S.C. § 1682, to promulgate regulations to govern the implementation, interpretation, and enforcement of Title IX.

16. The OCR has promulgated numerous documents outlining the requirements for an educational institution to be in compliance with Title IX, including a letter dated April 4, 2011 (“Dear Colleague Letter”) which specifically addresses student-on-student sexual harassment, assault, and violence.

17. Title IX applies to Defendant FSU, because Defendant FSU receives Federal financial assistance.

18. The DOE has determined that the Dear Colleague Letter is a “significant guidance document” under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, found at 72 Fed. Reg. 3432 (Jan. 25, 2007). United States Department of

Education Office for Civil Rights Dear Colleague Letter, April 4, 2011, n. 1.

19. Pursuant to 72 Fed. Reg. 3432, 3439, § I.3, a “guidance document” is “an agency statement of general applicability and future effect, other than a regulatory action . . . that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.”

20. A “significant guidance document” is “a guidance document disseminated to regulated entities or the general public that may reasonably be anticipated to . . . (iv) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866, as further amended.” 72 Fed. Reg. 3432, 3439, § I.4.

21. The purpose of the Dear Colleague Letter is to provide educational institutions with clarity as to the requirements they must follow in order to be in compliance with the DOE.

22. The Dear Colleague Letter specifically outlines the requirements that educational institutions must follow regarding student-on-student sexual harassment and assault.

23. A failure to adhere to the requirements outlined in the Dear Colleague Letter could result in the loss of federal funding for an educational institution such as FSU.

24. An inappropriate response by an educational institution to student on student sexual violence may subject the student to a hostile educational environment.

IV. FACTUAL BACKGROUND

25. On or about October 28, 2017, Plaintiff went to a party where alcohol was being consumed at the Defendant Phi Sigma Phi-EZ chapter fraternity house located near the FSU campus.

26. Following the party, Plaintiff was violently and forcibly sexually assaulted by Defendant Evans, a fellow FSU student and member of FSU's football team, at an apartment adjacent to Plaintiff's dorm.

27. At the time of the incident, Plaintiff was a seventeen (17) year old freshman at FSU.

28. Plaintiff was obviously traumatized by the incident and did not immediately know how and to whom at FSU she needed to report the incident.

29. Following the sexual assault, Plaintiff felt threatened by Defendant Evans' presence on campus and feared leaving her dormitory room because she risked meeting or seeing him.

30. Upon information and belief, at some time following the incident, Defendant PSP-EZ held a meeting regarding Defendant Evans sexual assault of the Plaintiff.

31. As a direct result of the sexual assault and Plaintiff's fear of encountering Defendant Evans upon leaving her dormitory room, Plaintiff failed all of her registered classes in the Fall 2017 semester.

32. On or about December 29, 2017, Plaintiff informed her mother of the sexual assault and her mother immediately informed Defendant FSU.

33. Despite Defendant FSU allegedly initiating an investigation of Plaintiff's sexual assault shortly after the sexual assault occurred, Plaintiff's mother was never notified that her minor child had suffered a sexual assault.

34. On March 8, 2018, Defendant FSU warned Plaintiff, by letter, that she was not to have any contact with Defendant Evans and that any such contact may result in her expulsion from FSU.

35. Upon information and belief, Defendant FSU subsequently began an investigation into Plaintiff's sexual assault after it was reported by an officer in her sorority. As part of that investigation; Plaintiff was interviewed on two occasions.

36. Plaintiff was not informed about and is not aware of the specific nature and extent of Defendant FSU's investigation and any hearings that may have been conducted pursuant to FSU's policies.

37. On March 22, 2018, Defendant FSU informed Plaintiff by letter that it had completed its investigation. This investigation concluded that Defendant Evans had violated FSU's "University Policy – Sexual Assault."

38. In its March 22, 2018 letter, Defendant stated that it had imposed sanctions on Defendant Evans consisting of: (1) issuance of a no-contact order for both Plaintiff and Defendant Evans; (2) suspension of Defendant Evans for two semesters; and (3) unspecified counseling as a requirement for Defendant Evans' re-admission consideration.

39. As a result of the sexual assault suffered at the hands of a fellow FSU student, Plaintiff withdrew from FSU at the conclusion Spring 2018 semester as she feared Defendant Evans return to campus as well in addition to feeling unsafe on campus.

COUNT I
VIOLATION OF TITLE IX - 20 U.S.C. § 1681 et seq.

40. Plaintiff repleads *in haec verba* the allegations contained within the above paragraphs of this Complaint as if the same were set forth fully herein.

41. Defendant FSU's adverse actions, inactions, and failures, committed and perpetrated upon the Plaintiff, constitute unlawful sexual harassment and discrimination on the basis of gender.

42. The harassment and discrimination suffered by Plaintiff at the hands of the Defendant FSU was sufficiently severe, pervasive, and objectively offensive so as to create an abusive and hostile educational environment for Plaintiff, and it interfered with her ability to learn or participate in educational or extracurricular activities.

43. The Dear Colleague Letter focuses on how sexual harassment and violence creates a hostile educational environment in violation of Title IX when it is serious enough to interfere with a student's ability to learn or participate in educational or extracurricular activities.

44. For the purposes of a FSU Title IX investigation, one single instance of sexual violence is sufficient to qualify as creating a hostile educational environment.

45. Defendant FSU did not provide Plaintiff with periodic updates on the investigation, as required by Title IX and its implementing policies.

46. Defendant FSU did not provide Plaintiff with a balanced and fair investigative and hearing process with the same opportunities to both Plaintiff and her assailant, and this in turn led to an unsound and unsupportable decision in the expulsion proceeding, in violation of Title IX and its implementing policies.

47. Defendant FSU failed to address Plaintiff's Title IX complaint adequately, appropriately, reliably, impartially, and reasonably.

48. Defendant FSU's adverse actions, inactions, and failures, amount to deliberate indifference toward the unlawful sexual conduct committed by Plaintiff's assailant, and which could be committed by Plaintiff's assailant.

49. Defendant FSU is deemed deliberately indifferent to the student-on-student violence committed against Plaintiff, due to Defendant FSU's clearly unreasonable handling of the Title IX investigation.

50. Plaintiff was subject to continuing fear, and she lost educational opportunities.

51. Defendant Evans' presence on the FSU campus subjected Plaintiff to additional harassment, by making her vulnerable to encounters with her assailant, for the time period after her attack on October 27, 2017 and Defendant Evans' suspension in March 2018.

52. Based upon information and belief, Defendant FSU failed to properly train and educate its employees, including school officials, officers, investigators, and adjudicators in appropriate response to allegations of sexual harassment and abuse, as well as the attendant Title IX policies and procedures which Defendant FSU violated.

53. Defendant FSU acted with deliberate indifference towards Plaintiff's report of sexual assault, as reflected by Defendant FSU's adverse actions, inactions, and failures, as alleged herein.

54. Defendant FSU's inquiry into Plaintiff's sexual assault was not thorough and was not impartial, as required by Title IX.

55. Defendant FSU's inquiry into Plaintiff's sexual assault was not adequate and was not reliable, as required by Title IX.

56. Defendant FSU's investigation and hearing processes into Plaintiff's sexual assault was not equitable and was not impartial, as required by Title IX.

57. Defendant FSU acted with deliberate indifference in deviating significantly from the standard of care outlined in the DOE Dear Colleague Letter and Defendant FSU's own policies.

58. One single instance of sexual violence is sufficient to qualify as creating a hostile education environment.

59. Defendant FSU created and subjected Plaintiff to a hostile education environment in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 (a) in some or all of the following particulars:

- a. In failing to properly punish perpetrators of sexual assaults, thereby creating a hostile environment that fails to discourage or prevent sexual assaults, and favors the perpetrators of sexual assaults as opposed to the victims;
- b. In failing to properly train and educate its employees regarding inappropriate response to allegations of sexual abuse and harassment, as well as the attendant Title IX policies and procedures;
- c. In offering Defendant Evans reinstatement despite his admitted violation of the Student Code of Conduct;
- d. In offering Defendant Evans reinstatement so that he may continue his education this elevating his interest above the Plaintiff's.

60. As a result of Defendant FSU's adverse actions, inactions, violations, and failures, Plaintiff suffered ongoing fear of encountering her assailant on campus, she was deprived of a multitude of educational opportunities and/or benefits, and suffered negative consequences including but not limited to: a significant drop in grades, avoidance of social activities on campus, avoidance of certain areas of campus, and withdrawal from FSU.

COUNT II
NEGLIGENCE AGAINST FAIRMONT STATE UNIVERSITY

61. Plaintiff repleads *in haec verba* the allegations contained within the above paragraphs of this Complaint as if the same were set forth fully herein.

62. At all times relevant hereto, Defendant FSU had a duty to take reasonable measures to protect the Plaintiff as a student of Defendant FSU's institution, because Defendant

FSU knew that Defendant Evans had committed an act of sexual violence against a fellow student, and that Plaintiff had complained of his acts to Defendant FSU.

63. Defendant had the ability to control Defendant Evans' access to the FSU campus, where Plaintiff went to school.

64. Defendant FSU had a duty to take reasonable protective measures to protect Plaintiff from the risk of sexual abuse and/or sexual assault, such as the duty to properly warn, train, or educate Defendant FSU's employees in the handling of Title IX complaints, such as the one made by Plaintiff to Defendant FSU.

65. A special relationship existed between the Plaintiff and Defendant FSU, as the Plaintiff was entrusted to the care of Defendant FSU, as a student enrolled at FSU, and Defendant FSU voluntarily accepted the entrusted care of Plaintiff.

66. Defendant FSU, by and through its agents, servants, or employees, knew or reasonably should have known that it was required to treat Plaintiff impartially and equitably in its Title IX investigation into her sexual assault, and Defendant FSU knew or reasonably should have known that it was required to complete an adequate, thorough, and reliable investigation, which it failed to do.

67. Defendant FSU knew or reasonably should have known that it was required to act without deliberate indifference and that it should not deviate significantly from the standard of care outlined in the DOE Dear Colleague Letter and Defendant FSU's own policies.

68. With this knowledge by Defendant FSU, it was foreseeable that harm would come to Plaintiff, in that her assailant was negligently permitted by Defendant FSU to remain on its campus and that Plaintiff would be vulnerable to another sexual assault.

69. Defendant FSU, by and through its agents, servants, and employees acting within the course and scope of their employment at all times relevant hereto, breached its duty of care to Plaintiff by deviating significantly from the standard of care outlined by the DOE in the Dear Colleague Letter and in Defendant FSU's own policies.

70. Defendant FSU breached its duty of care to Plaintiff by engaging in conduct including, but not limited to: failing to properly train and/or educate its agents, servants, and employees in the proper handling and investigation of Title IX complaints, including the adjudicatory process involving Defendant Evans' expulsion proceeding; failing to supervise its agents, servants, and employees to ensure a proper investigation into Plaintiff's Title IX complaint and to ensure a fair hearing process involving Defendant Evans' expulsion proceeding; and failing to conduct an investigative and hearing process within the appropriate professional standard of care.

71. But for the intentional and negligent acts and omissions of Defendant FSU as set forth herein, and Defendant FSU's violations of the standards of care, statutes, regulations, and policies applicable to Title IX, Plaintiff would not have been injured.

72. Defendant FSU's intentional and negligent acts and omissions amount to negligence, negligent failure to train and/or educate, failure to supervise, and constitutes negligence *per se*, all of which is the direct and proximate cause of harm and damages to Plaintiff.

73. As a direct and proximate result of the above-described conduct and failures to act of the Defendant FSU, Plaintiff has sustained losses and damages of body and mind; she has suffered and continues to suffer great pain of mind, shock, emotional distress, with physical manifestations of emotional distress, torment, embarrassment, loss of self-esteem, disgrace,

humiliation, and loss of enjoyment of life; she has suffered aggravation and inconvenience; she has suffered and continues to suffer spiritually, was prevented and will continue to be prevented from performing daily activities, and is unable to obtain the full enjoyment of life; she has sustained loss of earnings and earning capacity; she has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and she has suffered other losses and damages, liquidated, unliquidated, special, and general.

COUNT III
SEXUAL ASSAULT (against Defendant Evans)

74. Plaintiff repleads *in haec verba* the allegations contained within the above paragraphs of this Complaint as if the same were set forth fully herein.

75. On or about October 27, 2017, Defendant Evans engaged in sexual intrusion of Plaintiff without her consent.

76. On or about October 27, 2017, Defendant Evans engaged in acts which caused imminent apprehension of harmful or offensive contact, including contact of a sexual nature.

77. Plaintiff has suffered damages from Defendant Evans' sexual assault, including but not limited to emotional distress, pain, suffering and mental anguish.

COUNT IV
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Against Defendant Evans)

78. Plaintiff repleads *in haec verba* the allegations contained within the above paragraphs of this Complaint as if the same were set forth fully herein.

79. On or about October 27, 2019, Defendant Evans engaged in extreme and outrageous conduct of Plaintiff including rape and sexual assault.

80. Defendant Evans' conduct was intentional and/or reckless.

81. Defendant Evans' conduct caused Plaintiff to suffer severe emotional distress, anxiety, stress and fear for which she has sought medical treatment and counseling.

82. Plaintiff has suffered damages from Defendant Evans' sexual assault, including but not limited to emotional distress, pain, suffering and mental anguish.

COUNT V
NEGLIGENCE (Against Defendants PSP and PSP-EZ)

83. Plaintiff repleads *in haec verba* the allegations contained within the above paragraphs of this Complaint as if the same were set forth fully herein.

84. Defendants PSP and PSP-EZ were in a host-invitee relationship with Plaintiff based upon her attendance as a guest at a social event at their chapter fraternity house.

85. Defendants PSP and PSP-EZ assumed a duty of care over Plaintiff when it offered to transport Plaintiff from its fraternity house by one of its members.

86. Rape and sexual assault were foreseeable risks at parties involving alcohol at the PSP-EZ fraternity house.

87. On October 27, 2017, it was foreseeable that female invitees at the PSP-EZ fraternity house could be at risk of being sexually assaulted, particularly at social events where alcohol was served.

88. Defendants PSP and PSP-EZ breached their duties by not taking reasonable precautions to prevent its members from committing acts of rape or sexual assault, or fostering or enabling an environment in which a foreseeable act of rape or sexual assault would be committed.

89. Defendants PSP and PSP-EZ breached their duties to Plaintiff by not taking reasonable precautions to protect Plaintiff from rape and/or sexual assault.

90. As a direct and proximate result of Defendants' PSP and PSP-EZ's negligence, Plaintiff was sexually assaulted.

91. Plaintiff has suffered damages as a result of Defendants' PSP and PSP-EZ's negligence.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for compensatory damages, punitive damages, costs, interest, statutory and civil penalties according to law, attorney's fees and costs of litigation and for such other and further relief as this Court deems appropriate, just, and equitable.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS

/s/Robert B. Warner

Robert B. Warner (WVSB#7905)
Kameron T. Miller (WVSB #10774)
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

T.S.

(b) County of Residence of First Listed Plaintiff Marion

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Warner Law Offices, PLLC
227 Capitol Street
Charleston, WV 25333

DEFENDANTS

Fairmont State University Board of Governors,
Shawn Evans, Phi Sigma Phi-Epsilon Zeta Chapter, and
Phi Sigma Phi National Fraternity, Inc.

County of Residence of First Listed Defendant Marion

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Overpayment of Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1331 and 20 U.S.C. § 1681

Brief description of cause:

Title IX

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/25/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/Robert B. Warner

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.